

UCU Advice

Lesbian and gay rights at work

**AN ISSUE
FOR UCU
BRANCHES**

This document deals with lesbian, gay and bisexual rights at work. LGB political organisation is often linked to transgender (LGBT). While recognising and supporting this manner of organising, transgender rights are being addressed through gender legislation. As a result when this document refers to rights it is LGB (Sexual Orientation) and when it is about organising it is LGBT.

UCU

University and College Union

Sexual orientation equality at work

UCU is firmly committed to actively opposing all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, gender identity, disability, age or other status or personal characteristic.

Why is sexual orientation equality a trade union issue?

Despite the increasing visibility of lesbians, gay men, and bisexuals over the past 40 years, and valuable support from sections of the wider community, society at large still promotes the view that heterosexuality is the norm – and that homosexuality is therefore abnormal. This ‘heterosexism’ results in lesbians, gay men and bisexuals suffering discrimination and prejudice in many aspects of their lives, within and outside the workplace.

Prejudice and discrimination against lesbians, gay men and bisexuals have for many years been termed ‘homophobia’. This is widespread and can take many forms, from derogatory remarks and insulting ‘jokes’ to outright physical abuse.

Within the workplace, many lesbians, gay men, and bisexuals fear that being open about their sexuality may lead to harassment from management, colleagues and students, and sometimes other trade union members, as well as exclusion from promotion or even dismissal. Members have reported that friendly association between staff and students is regarded with more suspicion by management if the staff member is known to be lesbian, gay or bisexual.

These are basic trade union issues. LGB UCU members have a right to strong and effective representation by their union on these and any other work-related problems they may face.

**But what if it's not the right time?
What if we're in the middle of a
dispute over contracts and pay?
What if we're facing redundancies?**

The time is never right – and always right. We cannot afford to be divided – a chain is only as strong as its weakest link. Every member has a vital part to play. An injury to one is an injury to all.

**What if there are no LGB
members in our branch?**

This is impossible to know.

Lesbians, gay men and bisexuals do not fit a stereotype. They can be black, white, disabled or not, young and old. They may face sexism, ageism, racism and /or discrimination on the grounds of disability as well as heterosexism.

There is a general assumption that everyone is heterosexual unless they say otherwise; many lesbians, gay men, and bisexuals may feel forced to remain 'invisible' at work. Branch officers should be aware that these members may be reluctant to affirm their identity in an environment where they cannot be certain they will not experience harassment or other forms of discrimination at a personal or institutional level. This may well have happened to them in the past and their reluctance to 'come out' can be deeply ingrained.

Being 'invisible' has long been a survival strategy for lesbians, gay men and bisexuals. But once adopted, invisibility inhibits people from raising their concerns on issues which affect them. Unless the branch signals that such concerns do matter, many lesbians, gay men and bisexuals will assume, from experience, that they do not.

Where do we stand legally?

The Goods and Services Sexual Orientation Regulations came into force on 30th April 2007, making it unlawful [with a few unfortunate exceptions]to provide services in different ways to people on the basis of sexual orientation.

The Civil Partnership Act came into force on 5 December 2005. This gives virtually all the same rights and responsibilities that married couples currently have to same-sex couples who choose to register their partnerships.

The Employment Equality (Sexual Orientation) Regulations 2003 legislate against discrimination in employment and training, or occupational inequalities based on sexual orientation. The government defines all further and higher education courses as training, so students are covered by these regulations, and can take institutions to county/sheriff court if they feel they are being discriminated against on the grounds of their sexual orientation This follows from the EC Equal Treatment Framework Directive (No. 2000/78).

The Human Rights Act (1998) although it does not specifically mention sexual orientation, prohibits discrimination on any reasonable grounds (widely held to include sexual orientation) in relation to other rights set out in The European Convention of Human Rights.

Protocol 12 to The European Convention of Human Rights provides a general and freestanding prohibition of discrimination. However, this has yet to be adopted by the UK government, despite a TUC campaign to get them to do so.

The European Commission Code of Practice on

Protecting the Dignity of Women and Men at Work can be cited in employment tribunals in cases of unfair dismissal, and specifically refers to the inappropriateness of harassment on grounds of sexual orientation.

The Protection from Harassment Act (1997) makes harassment, including that based on sexual orientation, criminally unlawful.

The Northern Ireland Act (1998) places a positive duty on public authorities to promote equality of opportunity, specifically including sexual orientation.

In Great Britain, the positive equality duties now placed on public authorities in relation to race, disability and gender have so far not been extended to cover sexual orientation. Nor do they cover the private sector, which is probably where most discrimination occurs. The government has promised a single Equality Act in 2008, which UCU hopes will rectify this situation.

What should the branch be seeking to achieve with management?

Because, until 2003, there was no legal requirement to combat discrimination against lesbians, gay men and bisexuals at work, their needs were often overlooked when it came to implementing workplace equality policies. Whilst there have been some advances, there remains much work to be done to ensure that discrimination on the grounds of sexual orientation is accorded the same degree of importance as other forms of discrimination.

Branches need to monitor management policy and renegotiate collective agreements. They need to be willing to campaign on issues which, both directly

and indirectly, exclude LGB members from enjoying the benefits or protection afforded to other workers.

There is a national agreement on guidance for sexual orientation equality and employment made between the AOC and unions in further education (appendix 1). FE branches should use this as the basis for local agreements, seeking improvements if possible. HE branches may want to use this agreement as a starting point for a local agreement.

While ensuring that the institution's equality policy specifically states that discrimination on the grounds of sexual orientation will not be tolerated, branches should aim to negotiate a specific policy on sexual orientation, using the AOC agreement as a starting point.

This policy should make explicit that:

- recruitment procedures do not discriminate on the grounds of sexual orientation, and that lesbian, gay and bisexual applicants are welcome, eg by advertising in the gay press
- discrimination against lesbian, gay and bisexual employees in access to training, staff development and promotion is specifically excluded
- harassment policies specifically protect lesbians, gay men and bisexuals and list examples of inappropriate behaviour that will not be accepted
- staff who feel they have been subject to any detriment because of their sexual orientation can take the matter up through the grievance procedure, and that staff or students found guilty of discrimination [including bullying or harassment] on the grounds of sexual orientation will be subject to disciplinary procedures

- the circulation of offensive material or display of homophobic and other discriminatory graffiti will not be tolerated
 - the institution has a policy of reviewing the curriculum and its publicity material for negative images of LGB lifestyles, instead encouraging positive images of diversity
 - the institution's equality training will include sexual orientation
 - all policies relating to married couples extend to those in civil partnerships
 - special leave is extended to those in non-marital or non-registered relationships in the event of a partner's death
 - other kinds of special leave involving dependants give recognition to non-married or non-registered partners' responsibilities (eg a member may be jointly responsible for the child of a partner)
 - inclusive language is used throughout the institution's literature eg 'partner', rather than 'spouse', 'emergency contact details', rather than 'next of kin'
 - annual monitoring of policies and procedures will take place to analyse the effectiveness of these measures.
- representative he/she should take positive action to address the needs of LGB members)
 - support campaigns for LGB equality as they arise
 - publicise the union's equality policies so that all members are aware of them
 - be willing to challenge heterosexist behaviour and attitudes
 - publicise local LGBT events and encourage members to attend
 - publicise the national LGBT network, and regional and workplace LGBT meetings
 - help establish a self organising network and publicise other meetings for LGBT members
 - ensure that officers dealing with cases brought by LGB members have appropriate training, and that they understand the need to guarantee confidentiality
 - ensure that if it organises social events, they are not built around heterosexist assumptions, such as that everyone will bring a partner of the opposite sex
 - create an atmosphere in which it is clear that it takes the issue of discrimination on the grounds of sexual orientation seriously, even if it is not aware of having any LGB members.

How can a branch make itself supportive and welcoming to LGB members?

There are many things which can be done. For example the branch can:

- consider making an officer responsible for sexual orientation issues, who will then work to ensure that matters of concern within the workforce, and in relations with management, are taken up (if there is only one branch equality

What should staff do if another member of staff or a student 'comes out' to them?

The Centre for Excellence's *Report on Equality and Sexual Orientation: A Leadership Challenge in Further Education* provides insights into the experience of staff and students who are either perceived to be LGB or 'come out'.

'Coming out' is the process by which lesbians, gay men and bisexuals tell others about their sexuality:

one which often has to be repeated many times in their lives. It can be very difficult as the reactions of friends, family and work colleagues are never easy to predict. Some are very supportive but others are not. Some, indeed, may be openly hostile. The CEL report records this as being the experience of many staff and students in FE colleges.

Coming out is a very personal decision for anyone. It is for the individual concerned to decide when, where, how and to whom they come out. If any member chooses to tell a colleague about their sexuality, it is done on trust and should be treated with complete confidentiality. If the person concerned wishes others to know, it should be their choice and that of no-one else.

A student who approaches a UCU member and says he/she is lesbian, gay or bisexual should be offered the same support as any other student. Again, complete confidentiality should be guaranteed.

All UCU members should be aware of appropriate organisations to refer students to. The student union, for example, may have an LGBT society, and NUS nationally has an LGBT officer and LGBT structures.

For anyone, staff or student, in the process of coming out, the list of contacts at the end of this document may be helpful. Local numbers are also listed in local telephone directories and included in their 'Help' sections.

What does UCU do nationally?

UCU believes that all members have the right to expect their union to campaign publicly on their behalf on any issues which affect them. We have,

for example, been proactive in campaigns for equalisation of the age of consent, the repeal of Section 28, and for full equality legislation.

UCU also has structures to involve LGBT members: there is a reserved seat on the National Executive Council for a LGBT representative, annually elected by the whole membership.

There is an LGBT conference which is held once a year. Open to one delegate per branch, this elects a standing committee of eight members. The NEC member elected to the LGBT seat is chair of this committee.

UCU annually sends a delegation of 16 to the TUC's LGBT Conference. This includes one member of the UCU Equality Unit and the nominee to the TUC LGBT committee.

UCU nominates one person to stand for election to the TUC's LGBT Committee. The nominee is decided by the UCU LGBT committee following receipt of written submissions from interested members.

The Equality Unit has an email network to send out information about news and events of interest to LGBT members.

UCU also has a network for LGBT members, because it believes that self-organisation is important. The network is facilitated by the LGBT committee.

Networks and self-organisation

Just as women and black people have formed women-only or black-only groups – both within and outside the trade union movement – to identify and combat discrimination, and to formulate strategies for change, so lesbians, gay men, and bisexuals

need to meet to identify and combat the discrimination they face, and make proposals for change.

In many organisations, including the TUC and UCU, trans people join with LGB people for networking and organising, to fight the prejudice and discrimination which is a shared experience.

UCU believes that 'self-organisation' of LGBT members helps our union to identify and take effective action on issues important to these members. The LGBT network provides a way to get in touch with other LGBT UCU members in branches up and down the country. While offering confidentiality, the network may also encourage LGBT members to play a more active role in the union.

It enables members to get in touch with one another, to be kept aware of work undertaken by the Equality Unit, to be told of national events etc. To join the network simply send your name, address and telephone number (work or home) to the Equality Unit at UCU Head Office (eqadmin@ucu.org.uk). Strict confidentiality is assured. If you want to exchange views with other members, you can join the email address list.

In some UCU regions, there is now a network through which LGBT members hold occasional meetings. UCU has undertaken to help fund one such meeting per term. To find out if there is a network in your region, contact the Equality Unit. You will be put in touch with a regional contact if one is available, or you could volunteer to be the contact yourself!

UCU nationally strives to serve the specific needs of its LGBT members. But true effectiveness depends on the active involvement of members at every level in the union.

Useful contacts

UCU Equality Unit

27 Britannia Street, London WC1X 9JP
Tel 020 7837 3636 Minicom 020 7278 0470
Email eqadmin@ucu.org.uk
Website www.UCU.org.uk

Trades Union Congress (TUC)

Congress House, 23-28 Great Russell Street,
London WC1B 3LS
Tel 020 7636 4030 Website www.tuc.org.uk

NUS LGB Campaign

c/o Nelson Mandela House, 461 Holloway Road,
London N7 6LJ
Tel 020 7272 8900

CAMPAIGNS

School's Out

BM School's Out! National, London WC1N 3XX
Email secretary@schools-out.org.uk
Website www.schools-out.org.uk

Outrage!

PO Box 17816, London SW14 8WT
Tel 020 8240 0222
Email feedback@outrage.org.uk

Stonewall

46-48 Grosvenor Gardens, London SW1W 0EB
Tel 020 7881 9440 Email info@stonewall.org.uk
Website www.stonewall.org.uk

SWITCHBOARDS

London Lesbian and Gay Switchboard

Tel 020 7837 7324 (24 hours)

There are also many local switchboards; numbers can be obtained through the London Switchboard.

Joint agreement on guidance for sexual orientation equality in employment in further education colleges

between

The Association of Colleges (AoC)

and

Association for College Management (ACM); Association of Teachers & Lecturers (ATL); GMB; National Association of Teachers in Further and Higher Education (NATFHE); Transport & General Workers' Union (T&G); UNISON

April 2004

NB This agreement is likely to be updated in the near future to reflect recent legislative changes. However, these amendments will be minor, and the current version can still be used as the basis for local negotiation.

1 Introduction

- 1.1 This Joint Agreement on Guidance has been developed to equip Colleges to meet their legal obligations under the Employment Equality (Sexual Orientation) Regulations 2003. The regulations implement the sexual orientation aspects of the EC Equal Treatment Framework Directive (No. 2000/78), which sets out a framework for eliminating discrimination in employment, or occupational inequalities, based on sexual orientation.
- 1.2 Promoting equality between staff of different sexual orientations has long been a moral duty, and has recently become a legal one. This Guidance is intended to support colleges towards achieving that end.

2 Commitment

- 2.1 The College encourages, celebrates and values the diversity brought to workforce by individuals. It believes that the College will benefit from engaging staff at all levels of responsibility, and across all areas of work regardless of their sexual orientation, thus helping to provide positive role models for students of differing sexualities. The College is committed to equality of treatment for all employees. This will apply to the operation and implementation of all its employment policies. The College will treat all employees with dignity and respect, and seek to provide a positive working environment free from discrimination, harassment or victimisation in relation to an individual's sexual orientation.
- 2.2 The College should seek not only to eliminate

discrimination on the grounds of sexual orientation, but also to create a positive working environment based on professional working relations between all employees. The aim is to create a positive inclusive ethos with a shared commitment to challenging and preventing stereotyping, prejudice and discrimination, to respecting diversity and difference and to encouraging good working relations between heterosexuals, lesbian, gay and bisexual people within the College.

- 2.3 The College should work towards the elimination of prejudice and discrimination, whether overt or covert, and will seek to ensure that all staff have equal access to the full range of college facilities.

Where personal information is divulged in confidence, every attempt will be made to respect this.

3 Legal duties

- 3.1 The College should undertake to fulfil all the legal duties established by the Employment Equality (Sexual Orientation) Regulations 2003 (“the Regulations”) and to set out a framework for eliminating employment or occupational inequalities based on sexual orientation i.e. to ensure there will be no discrimination against staff, either directly or indirectly on the grounds of sexual orientation in access to employment, training, promotion or dismissal, in the provision of workplace benefits, or the provision of references.

The regulations deal with discrimination or harassment on the grounds of sexual orientation, which is defined in Reg. 2(1) as

meaning “sexual orientation towards persons of the same sex; persons of the opposite sex; or persons of the same sex and of the opposite sex”. The law therefore protects people from discrimination whatever their sexual orientation.

- 3.2 The wide range of other legislative provision which might relate to sexual orientation discrimination, including:

- Employment Rights Act 1966
- Human Rights Act 1988
- Pensions Act 1995
- Protection from Harassment Act 1977
- Maternity and Parental Leave [Amendment] Regulations 2002
- Maternity and Adoption Leave Regulations 2002
- Employment Act 2002

4 Meeting our legal duties

The College may wish to refer to the ACAS Guide “Sexual Orientation in the Workplace”.

- 4.1 The College should not discriminate on grounds of sexual orientation in the way it recruits and selects staff.
- 4.2 The College should ensure that all employees regardless of their sexuality shall have equal rights to training, promotion and other aspects of career development.
- 4.3 The College should ensure that all employees regardless of their sexuality shall have equal rights to training, promotion and other aspects of career development.
- 4.4 The College should ensure that there is no discrimination on the grounds of sexual

orientation in relation to dismissal of staff. In particular, should a redundancy situation occur, it should ensure that sexual orientation is not a factor in the selection of those to be made redundant.

- 4.5 Harassment on the grounds of sexuality is viewed by the College as a very serious offence, which if proven may in certain circumstances lead to the dismissal of a member of staff, or, if an employee is harassed by a student, the expulsion of that student.
- 4.6 The College should ensure that any benefits [facilities and services] which it offers to heterosexual staff will be equally available to lesbian, gay, and bisexual staff. This includes any benefits offered to a partner if such benefits are available to unmarried opposite sex partners, and any provisions for special leave relating to partners.
- 4.7 The College should ensure that any references provided to staff who are leaving are not influenced in any way by the sexual orientation of the departing staff member.

5 Ensuring Equality

The College values its entire staff equally, and will endeavour to create an environment in which all staff, whatever their sexual orientation, feel equally valued and welcomed.

The College is committed to creating an environment in which everyone is treated equally and with respect. The College aims to eliminate sexual orientation discrimination in its structures and employment practices as

well as to encourage change in individual behaviour and attitudes, and ensure equality of opportunity and treatment for all staff, regardless of their sexuality. The holding of religious beliefs which regard homosexuality as a sin will not be a justification for harassment, abuse, propaganda insults etc, directed against lesbian, gay or bisexual staff.

- 5.1 The College environment, in terms of its pictures, images, publicity materials, literature etc, should reflect the diversity of its staff and students, including diverse sexualities.
- 5.2 Homophobic abuse, harassment or bullying (e.g. name-calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) are serious disciplinary offences, and should be dealt with under the appropriate procedure.
- 5.3 Homophobic propaganda, in the forms of written materials, graffiti, music or speeches will not be tolerated. The College undertakes to remove any such propaganda whenever it appears on the premises.
- 5.4 The College should provide a supportive environment for staff or students who wish it to be known that they are lesbian, gay, or bisexual. However, it is the right of the individuals to choose whether they wish to be open about their sexuality in the College. To 'out' someone, whether staff or student, without their permission is a form of harassment, and should be treated as such.
- 5.5 Assumptions will not be made that partners of staff and students are always of the

opposite sex. Workplace benefits within the College's control, should apply equally to same sex partners.

- 5.6 Lesbian, gay and bisexual issues should be included in all equality training and internal attitudinal surveys.
- 5.7 The College welcomes and will facilitate lesbian, gay and bisexual staff groups.
- 5.8 The College recognises that lesbian, gay, and bisexual staff and students come from diverse backgrounds, and will strive to ensure that they do not face discrimination either on the grounds of their sexual orientation or with regard to other aspects of their identity (e.g. race, gender, age, religion, disability).

6 Monitoring (optional clause)

- 6.1 The College is committed to ensuring that it is making progress in achieving equal treatment for staff regardless of their sexual orientation. To ensure that progress is made, it may undertake monitoring of the following in relation to sexual orientation.
 - the take and outcomes of grievance and harassment procedures;
 - the content of equality training;
 - a question in anonymous staff attitude surveys in information from exit interview;
 - equal access to family/partner benefits;
 - language and images used in internal and external communication.
- 6.2 The College recognises that monitoring individual staff for sexual orientation is a sensitive issue, and there is no legal obligation to do so. It undertakes to keep the question of whether such monitoring should occur under

review with the recognised trade unions and other relevant staff groups. If it is agreed to undertake such monitoring it will be explained to staff that there is no legal obligation to answer the question, that the results will be used to combat discrimination, and that the information is entirely confidential.

- 6.3 Once the results of any monitoring are available, the College will consider relevant action to reduce any disadvantage suffered by staff of any particular sexual orientation.

7 Confidentiality

The College recognises that because of the existence of heterosexism and homophobia, confidentiality is a major issue for some lesbians, gay men and bisexuals. The College aims to create an environment in which staff feel safe to be "out at work". However, until this is achieved:

- 7.1 The College will nominate a member of staff in the personnel department to whom lesbian, gay and bisexual staff can go to who are appropriately trained where confidentiality will be maintained.
- 7.2 Areas to be covered by the named person include:
 - a confidential complaints procedure;
 - confidential handling of special leave;
 - confidential managing of partner benefits etc.

8 Division of responsibilities

- 8.1 Governors should aspire to ensure that the membership of the Corporation welcomes diversity in sexuality.

Governors are responsible for ensuring that:

- The College's strategic plan includes a commitment to sexual orientation equality;
- Equalities training features as part of the College's strategic plan;
- They are aware of the Corporation's statutory responsibilities in relation to sexual orientation legislation as an employer.

8.2 Managers are responsible for ensuring that:

- the College principal/chief executive and senior management team have responsibility for taking the lead in challenging homophobic behaviour on the part of the managers, staff or learners and creating a positive, inclusive ethos;
- they are aware of the College's statutory duties in relation to sexual orientation legislation;
- all aspects of college policy and activity are sensitive to issues in relation to lesbian, gay and bisexual staff;
- the procedures for the recruitment and promotion of staff enshrine best practice in equal opportunities;
- the College's publicity materials present appropriate positive and non-stereotypical messages about people of diverse sexualities;
- appropriate training and development is provided to support the appreciation and understanding of diversity.

8.3 Staff are responsible for ensuring that:

- they are aware of the College's statutory duties in relation to sexual orientation legislation;

- they challenge homophobic behaviour, whether witting or unwitting, by learners, work placement providers, outside contractors or other members of staff whenever practicable.

9 Publicising our policy and progress

9.1 To the public (including learners, work placement providers and staff):

Our commitment to equality, including sexual orientation equality will be highlighted in our prospectus, annual report and annual financial statement.

9.2 To staff:

9.2.1 All staff will have access to or receive a full copy of the policy.

The staff induction programme should highlight the College's commitment to sexual orientation equality, action that can be taken by staff who suffer discrimination and the action to be taken against any perpetrators of such discrimination.

10 Complaints

10.1 The College should seek to provide a supportive environment for staff who make claims of discrimination or harassment.

10.2 Acts of discrimination, harassment, victimisation or abuse on the grounds of sexual orientation will be treated as a serious disciplinary offence.

10.3 Staff who feel they are being discriminated against on grounds of their sexual orientation by other members of staff should raise the matter under the Harassment or Grievance Procedure, which will, if the accusation is

upheld, be treated as a serious disciplinary offence.

10.4 If, in the course of their work, College staff suffer sexual orientation discrimination from members of the public, the College will take appropriate action and provide appropriate support.

10.5 Any behaviour directed against staff by students will be dealt with under the student disciplinary procedure.

11 Review and consultation

11.1 This Joint Agreement on Guidance will be reviewed on a regular basis in accordance with legislative developments and the need for good practice, by the College.

11.2 As part of the review the College should seek and take into account the views of stakeholders including the consultation/negotiating arrangements within the College, and appropriate equality

bodies.

12 Implementation

12.1 The College, working in partnership with the recognised trade unions and employee representatives, will seek to ensure that all staffing policies and procedures (e.g. Recruitment and Selection Procedure) are non-discriminatory, and that monitoring and positive action processes are regularly reviewed.

13 General

13.1 This policy should not be read in isolation, but cross-referenced with all relevant college employment policies.

14 Definition of joint agreement

14.1 The Agreement on this guidance is intended as a recommendation to colleges relating to Equality in Employment issues.

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